

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

ANAS ELHADY, et al., )  
 )  
 Plaintiffs, ) Civil No. 16-375  
 )  
 v. )  
 )  
 CHARLES H. KABLE, ) Alexandria, Virginia  
 et al., ) February 14, 2020  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE ANTHONY J. TRENGA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Amy Powell  
Christopher Healy  
Tony Coppolino

For the Defendants: Gadeir Abbas  
Justin Sadowsky

Court Reporter: PATRICIA A. KANESHIRO-MILLER, RMR, CRR

Proceedings reported by stenotype shorthand.  
Transcript produced by computer-aided transcription.

P R O C E E D I N G S

(10:03 a.m.)

THE DEPUTY CLERK: Civil Action Number 1:16-CV-375,  
Elhady, et al, v. Piehota, et al.

Counsel, will you please note your appearances for  
the record.

MS. POWELL: Amy Powell for the government, Your  
Honor. With me at counsel table are Christopher Healy and  
Tony Coppolino.

THE COURT: All right.

MS. POWELL: With the Court's permission, Mr. Healy  
is going to present with respect to the motion to stay, and I  
will answer any other questions the Court has.

THE COURT: All right. Very good. Welcome.

MR. ABBAS: Good morning, Your Honor. Here for the  
plaintiffs, myself, Gadeir Abbas, and Justin Sadowsky. I  
will be presenting with regards to both motions.

THE COURT: All right. We are here on a motion to  
stay and also on a motion to recertify the procedural due  
process claim.

Mr. Abbas, let me ask you: Are you taking any  
position on whether the Court should recertify the other  
issues that it had previously certified?

MR. ABBAS: Yes, Your Honor. Our position is that  
the Court shouldn't certify any matter for any kind of appeal

1       until the issue of what remedy the Court is going to issue is  
2       resolved completely.

3               I think that is implicit in the Court's December 27th  
4       order. The Court did enter a final judgment with regards to  
5       the substantive due process, the nondelegation claim --

6               THE COURT: Right.

7               MR. ABBAS: -- but withheld doing so. And Your Honor  
8       did certify it previously for an appeal, but the government  
9       is not intending, it appears, to comply with any kind of  
10      revision that -- with the DHS TRIP processing. So I think  
11      this Court's firm intervention and injunction that executes  
12      the September 4th opinion is what is needed here, and that is  
13      a question that remains outstanding, what relief are the  
14      plaintiffs going to get.

15              THE COURT: I understand. But I take your position  
16      is that irrespective of whether the Court certifies or  
17      doesn't recertify the procedural due process issue, you do  
18      not want the Court to recertify the substantive due process  
19      claim, equal protection and the nondelegation --

20              MR. ABBAS: We do not intend to appeal any of those  
21      dismissed claims. We are not appealing. The final day is  
22      today, but we're not intending to appeal those claims. And  
23      part of it is --

24              THE COURT: Well, there is no appeal period at this  
25      point, is there?

1 MR. ABBAS: I think that is right for substantive due  
2 process, equal protection, and nondelegation --

3 THE COURT: I vacated those certified questions.

4 MR. ABBAS: I believe Your Honor only certified the  
5 questions that regard the procedural due process claim. And  
6 I apologize --

7 THE COURT: I will look back --

8 MR. ABBAS: And I think the only matter now before  
9 the Court is the procedural due process claim, which is --  
10 because there is only one claim, we respectfully suggest that  
11 it makes sense for this Court to dispose of all ancillary --

12 THE COURT: I understand. Let me hear first from the  
13 defendants --

14 MR. ABBAS: Sure.

15 THE COURT: -- on the motion to stay.

16 MR. HEALY: Thank you, Your Honor.

17 THE COURT: Yes.

18 MR. HEALY: Your Honor, the government has moved for  
19 a stay here in order to protect its ability to defend the  
20 current process at the Fourth Circuit and to prevent  
21 irreversible damage to national security. The stay would  
22 allow the Fourth Circuit to rule on these important questions  
23 of national security before the Government is ordered to  
24 apply new and, in the government's view, dangerous procedures  
25 to plaintiffs if they are on the --

1 THE COURT: Well, aren't you collapsing the process?  
2 The Court ordered that you develop and present to the Court  
3 revised procedures. The Court always has the ability to  
4 enter orders, as appropriate, protecting from some of the  
5 concerns you have pending the outcome of the appeal, doesn't  
6 it?

7 MR. HEALY: With respect, Your Honor, that is not our  
8 reading of the Court's order --

9 THE COURT: No, I understand. But certainly the  
10 Court has that ability.

11 MR. HEALY: The Court would certainly have that  
12 ability, Your Honor, but I believe that the order that is  
13 before us requires the government both to develop procedures  
14 and apply those procedures to any plaintiffs who are on the  
15 TSDB, and in our view, that is irreparable harm both to --

16 THE COURT: Well, I believe the order requires that  
17 you present to the Court for its review as to their  
18 constitutional adequacy.

19 MR. HEALY: What the order says, Your Honor, with  
20 respect, is that defendants promptly review the listing of  
21 any named plaintiff currently listed in the TSDB according to  
22 additional procedures to be added to a revised DHS TRIP  
23 process.

24 THE COURT: Right.

25 MR. HEALY: To our reading, that --

1 THE COURT: How does that in and of itself affect  
2 national security?

3 MR. HEALY: That in itself affects national  
4 security because the --

5 THE COURT: You're worried about the disclosures to  
6 the plaintiffs.

7 MR. HEALY: That is correct. And we've been ordered  
8 to both develop a new process and apply that process to  
9 plaintiffs. That is an order to disclose something to  
10 plaintiffs, to make some particular disclosure to plaintiffs,  
11 and in particular, the considerations, the particular  
12 considerations that the Court offers that orders the  
13 government to consider in its order include a threshold  
14 showing necessary to determine whether any such plaintiff is  
15 entitled to a review, the notice and explanation given to any  
16 plaintiff determined not to meet that threshold, notice and  
17 opportunity to respond to any derogatory information, notice  
18 to be given to plaintiffs with respect to their TSDB status  
19 upon completion of that review, and the opportunity for  
20 review and/or appeal of any adverse determination.

21 Consideration of those particular factors and the application  
22 of a revised redress process to plaintiffs would necessarily  
23 require some modicum of further disclosure to plaintiffs --

24 THE COURT: Well, if we back off the disclosure piece  
25 of it, what irreparable harm would there be, requiring the

1 government to basically continue what I understand it has  
2 already done substantially, which is review these procedures  
3 and come up with revised procedures that they think would  
4 address the Court's decision?

5 MR. HEALY: So a couple of points on that, Your  
6 Honor. I think that if Your Honor were to change the order  
7 and remove the requirement for applying new procedures to  
8 plaintiffs, I think it would create a couple of problems,  
9 some of them practical, some of them legal. Number one, I  
10 think it could potentially create jurisdictional problems in  
11 that the Court might be engaging in an advisory opinion and  
12 requiring -- and it could, in fact, have sort of  
13 separation-of-powers problems by requiring the government to  
14 act in the abstract to create a new process for the Court's  
15 review.

16 THE COURT: Well, it seems to me there are two  
17 issues. One is developing and proposing the procedures. The  
18 other is the implementation of the procedures. I don't  
19 understand why you can't proceed with one, with the Court  
20 reserving on the second issue pending the outcome --

21 MR. HEALY: Right, and my first point is right now we  
22 have been ordered to do both --

23 THE COURT: I understand.

24 MR. HEALY: -- that is point one.

25 Point two, we don't believe it is reasonable to

1 expect that multiple agencies will expend months coming up  
2 with a draft policy that we simply don't think is legally  
3 necessary or required. And I understand Your Honor has a  
4 different point of view on that and has ordered us otherwise  
5 on that question.

6 But with respect to the likelihood of success on the  
7 merits here, courts have gone both ways on this question, and  
8 in particular there are two circuit court opinions now that  
9 disagree with Your Honor's conclusion and that goes to -- the  
10 required showing is whether or not we have a substantial case  
11 on the merits for the purposes of a stay on appeal, and we  
12 have made that showing here.

13 THE COURT: Well, I don't think the issue is whether  
14 it is a substantial case; it is whether you have made a  
15 strong showing you're going to likely prevail.

16 MR. HEALY: Just to be clear, the standard is not  
17 that Your Honor needs to disagree with your prior opinion --

18 THE COURT: No, I understand --

19 MR. HEALY: -- or change your mind. The question is  
20 whether we have a substantial case. And there are two  
21 circuit court opinions that would militate in our favor, as  
22 well as numerous district court opinions that go the other  
23 way. And so there is at least a substantial question on the  
24 merits, and a strong showing on the merits, that we would  
25 prevail on appeal. And it is at least -- would be a good use



1 of both judicial resources and defendants' resources to wait  
2 until we have the input from the Fourth Circuit until we are  
3 ordered to go down that road.

4 THE COURT: Well, the Watchlisting Advisory Council,  
5 that's what they're there for, correct, to review these  
6 procedures and consider issues relating to these procedures?

7 MR. HEALY: Among other aspects, it is one of the  
8 reasons --

9 THE COURT: Right.

10 MR. HEALY: -- that they're there, yes.

11 THE COURT: That is what their job is, apparently.

12 MR. HEALY: Yes, but this would be a very large and  
13 time-consuming undertaking. And it is one that, as you have  
14 seen in our status report, is being undertaken, and we are  
15 complying -- in the process of complying with the order. But  
16 going down that road will take a lot of time and effort. And  
17 the fact is that as this appeal proceeds in the Fourth  
18 Circuit, the Fourth Circuit may disagree with Your Honor's  
19 conclusion and rule in our favor, in which case all of that  
20 effort will be for nought, or they may agree with Your Honor  
21 and not rule in our favor and, instead, apply different  
22 particular factors that the government should consider, in  
23 which case we will have to start from this process again. So  
24 I think all of that goes to irreparable harm, goes to  
25 likelihood of success on the merits, and also goes to the

1 balancing that Your Honor has to do when facing a motion to  
2 stay, to look at the irreparable harm to defendants and to  
3 the public interest and balance that with the harm to the  
4 plaintiffs. And harm to the plaintiffs here, if any has been  
5 shown, is minimal. And the reason that that is so is because  
6 of the fact that what we have been ordered to do is create  
7 more process. None of that process necessarily will result  
8 in the change of any particular plaintiff's watchlist status.  
9 So I would refer Your Honor to the Al Maqaleh case that is  
10 cited on page 10, where the DEC did that kind of balancing  
11 and said, okay, the plaintiffs in that particular case were  
12 detained. This was a habeas case, and that was unequivocally  
13 a continuing harm to plaintiff, but the national security  
14 interests in that case were such that a stay on appeal was  
15 merited. And so for those reasons I think the state here is  
16 similarly merited.

17 One last point, I think that there is a practical  
18 consideration here in that defendants, with respect to the  
19 policy process, the policy process that we would implement  
20 now, absent a stay, absent final ruling and the exhaustion of  
21 the appeals process from the Fourth Circuit, might look  
22 significantly different than the process right now while we  
23 are in the midst of an appeal.

24 With respect to irreparable harm, there are all the  
25 reasons that Your Honor has already seen with respect to

1 irreparable harm under summary judgment. However, plaintiffs  
2 indicate that they believe that the balance of harms has  
3 already been decided in their favor on summary judgment. And  
4 with respect, the question before the Court here is just a  
5 different one. The question at summary judgment was the  
6 balance of the interests to the party for the purpose of  
7 remedying a prudential deprivation of liberty interests under  
8 due process; whereas, here the question is whether national  
9 security would be irreparably harmed if the government is  
10 ordered to continue through with this national security  
11 process -- with this process of changing the DHS TRIP  
12 procedures.

13 We have already explained why such disclosures would  
14 risk harm to national security. The question now before the  
15 Court is whether an appeal should proceed before defendants  
16 have had the chance to get the final word from the Fourth  
17 Circuit on that. This is not simply with respect to  
18 disclosures that Your Honor's order would require to any  
19 plaintiffs who are on the TSDB, but also disclosures that  
20 would be required to those plaintiffs who are not on the  
21 TSDB. The order specifically contemplates particular  
22 consideration given to notice and any explanation given to  
23 any plaintiff determined not to meet the threshold showing  
24 for notice. So that itself, as described in the Groh  
25 Declaration, at paragraph 66, that was attached to our

1 opening summary judgment motion, describes why notification  
2 to a particular plaintiff that that person is not on the list  
3 would also inform adversaries about the kinds of persons that  
4 are of interest or not of interest to the government.

5 THE COURT: That's the piece that I don't quite  
6 understand because the critical component of that requirement  
7 criteria is coming up with what would trip the qualification  
8 to have your status reviewed. I know the government keeps  
9 talking about how it would be a problem if anybody who thinks  
10 they may be on the list without any demonstration of any  
11 consequence could simply ask and find out if they're on the  
12 list or not. So it seems to me that a critical component of  
13 this revised procedure would be to come up with what  
14 criteria, what impact would be sufficient as a threshold  
15 matter to allow or qualify that person to have their status  
16 reviewed.

17 MR. HEALY: So I think this presents a very difficult  
18 question, Your Honor.

19 THE COURT: I understand.

20 MR. HEALY: But I think that the reason that this  
21 would present harm is a significant one. Even if, let's say,  
22 there were a threshold where you only trip this process if  
23 you're stopped five times in the last six months, let's just  
24 create a hypothetical.

25 THE COURT: Enhanced screening.

1 MR. HEALY: Enhanced screening, yes.

2 Some people who go through that threshold might be on  
3 the list, some might not be on the list. If some of those  
4 individuals go through the process and learn their status and  
5 some go through that process and do not learn their status,  
6 the same harms apply to that narrower universe of persons.  
7 So I think that there is still harm with respect to a  
8 threshold. You're narrowing the universe slightly, but there  
9 may be many people who would learn their non-status through  
10 notification under that procedure even if they trip the  
11 threshold in a way that would harm national security.

12 Next point, Your Honor, is that defendants would be  
13 irreparably harmed given the fact that moving forward would  
14 likely moot the case on appeal. Plaintiffs suggest in their  
15 opposition that the government may appeal an injunction that  
16 forces to modify its redress procedures. As I've explained  
17 before, we believe that's exactly what we are faced with  
18 here, which is the reason that we have appealed. There is a  
19 real risk that the government will be forced to take the very  
20 action if this case is not appealed -- is not stayed, rather,  
21 that it would be arguing on appeal should not be required,  
22 and that would likely moot the case. So that is also an  
23 irreparable harm.

24 THE COURT: Run that by me again. Why would it  
25 potentially moot the case?

1 MR. HEALY: Because if the government is complying  
2 with procedures and making disclosures that they are arguing  
3 in the Court of Appeals is not required, that might actually  
4 provide plaintiffs with the redress that they're seeking and  
5 moot out the case. It would essentially -- could waive our  
6 arguments that doing these things is simply not possible and  
7 not -- can't be done consistently with national security.

8 THE COURT: All right.

9 MR. HEALY: I'm sure, as Your Honor understands, the  
10 question of what process, if any, could be provided to the  
11 plaintiffs consistent with national security concerns is a  
12 deeply difficult question. Any objective standard for a  
13 threshold determination that would trigger more notice would  
14 likewise provide further information to adversaries about who  
15 the government does or does not consider a threat. We've  
16 been ordered, in essence, to come up with a revised redress  
17 process that the defendants in their considered judgment  
18 believe would risk disclosures that would harm our ability to  
19 fight terrorism. At the very least, and particularly given  
20 the weight of the case law in defendant's favor on the legal  
21 question, the gravity of this issue merits a stay.

22 Thank you.

23 THE COURT: Let me hear also from the defendants on  
24 the certification issue.

25 MS. POWELL: I don't have a great deal to add to our

1 papers, Your Honor. I don't think plaintiffs engaged with  
2 the 1292(b)(2) standard.

3 THE COURT: What do you think certifying the question  
4 as to what is already before the Fourth Circuit --

5 MS. POWELL: So we think that the current notice of  
6 appeal is adequate to appeal all of these issues, to be  
7 clear, Your Honor. And we have asked for the 1292(b)(2)  
8 certification as well as sort of a belts-and-suspenders  
9 approach to make sure that all the issues can be before the  
10 Fourth Circuit in case they disagree.

11 THE COURT: Okay.

12 MS. POWELL: The only point I would emphasize in our  
13 briefs is that plaintiffs simply haven't engaged with that  
14 standard, an independent basis for jurisdiction. Thus, even  
15 if we were wrong about the other bases for jurisdiction, as  
16 plaintiffs argue, that would be more reason to certify under  
17 1292(b)(2), so that the Fourth Circuit could weigh in on this  
18 meaningful divergence of legal opinion over how to analyze  
19 these issues, which necessarily hangs over all of the  
20 remaining issues in this case.

21 THE COURT: All right. Mr. Abbas.

22 MR. ABBAS: This is what the government asks for.  
23 The government asked in its remedy brief to have the  
24 opportunity to adjust its watchlisting practices in light of  
25 this Court's September 4th decision. We lost. We asked in

1 our remedies briefing for specific injunctions regarding  
2 this, that, and the other. We didn't get that. They got an  
3 opportunity from this Court to propose a revised set of  
4 watchlisting practices in light of the Court's unequivocal  
5 September decision. And instead of doing that, they filed an  
6 appeal that I believe the reason they want the certification  
7 is because the appeal is defective and we're going to be back  
8 before the Court fully, but this Court has the discretions to  
9 grant the certification for interlocutory appeal if it so  
10 chooses. We're not arguing that the Court lacks the  
11 authority to certify. We're saying that it is not -- it  
12 doesn't make sense given the circumstances of the case.

13 The question of what to do --

14 THE COURT: Well, you don't want it certified  
15 because, in your view, without the certification there's not  
16 a valid appeal.

17 MR. ABBAS: Yes, Your Honor, exactly. The whole  
18 matter will be before this Court. And I think that's  
19 especially important because we're not appealing anything  
20 else. There is no separate -- you know, the opposing counsel  
21 makes the point in their reply that, oh, you know, if they're  
22 going to file an appeal on the dismissed counts, the equal  
23 protection, the substantive due process, the nondelegation  
24 claim, then there is going to be something in the Fourth  
25 Circuit anyways, so the interlocutory certification will put



1 more of it in the Fourth Circuit. But that is not what is  
2 going on. Here, the only claim that exists and the only  
3 claim that is live after today is the procedural due process  
4 claim. And what the government is proposing is to split that  
5 procedural due process claim into two pieces. The liability  
6 piece, send it to the Fourth Circuit. The remedies piece  
7 stays with the district court. And then they want to stay  
8 the remedies piece. They're just trying to take it out of  
9 this Court's hands. That's what is going on.

10 And there has never been a factual record about a  
11 watchlist case as the factual record that is before this  
12 Court. That's something that the Tenth Circuit noted  
13 explicitly, that the case -- that the plaintiff in *Abdi*, the  
14 appellant in *Abdi*, the facts were not analogous, were not  
15 comparable to the facts assembled here. When the government  
16 says that the harm to plaintiffs is minimal, they're  
17 overlooking undisputed facts that show Hassan Shibly, because  
18 of their illegal watchlist, Hassan Shibly was handcuffed in  
19 front of his grandmother, and she was so shaken she had to  
20 be rushed to the hospital. That's the harm to the  
21 plaintiffs.

22 What the government has been doing for years now is  
23 they have been a moving target in many ways. The  
24 disclosure -- their reluctance to disclose the watchlist  
25 status to this Court or to anybody else, their reluctance is,

1 particular to this case, probably because it is unhelpful to  
2 their litigation position. In a case in Oregon, the *Fikre*  
3 matter that is pending before a federal court in Oregon,  
4 they -- they -- of their own volition, they asked the Court's  
5 permission to disclose watchlist status to the Court and to  
6 the attorneys only. And so the -- they're operating a secret  
7 government watchlist that is disseminated to every single law  
8 enforcement agency, to more than 500 private companies, to  
9 more than 60 foreign countries, and without this Court's firm  
10 intervention, without firm deadlines on what they're going to  
11 -- they're going to keep on evading a final decision about  
12 their illegal watchlist.

13 They say that it is a very large and time-consuming  
14 undertaking. We did not -- the plaintiffs did not ask the  
15 federal government to build a global secret terrorist  
16 watchlist. The defendants did that. And in making that  
17 choice, they're subject to the Constitution. This Court has  
18 said that the way that they're operating their global  
19 watchlist is illegal. And so even if it's a time-consuming  
20 undertaking, they have to do it, it is the federal  
21 government. And you know, there's been a little bit of  
22 opaqueness with regard to this Watchlisting Advisory Council.  
23 Sometimes it is like an independent actor, other times it is  
24 not. But the undisputed facts are that this is the FBI's  
25 decision. The FBI controls the watchlist. The FBI is

1 operating the database. The FBI chooses what the inclusion  
2 standard is. The FBI decides what information to provide the  
3 other participants in the watchlisting process. So only the  
4 FBI is a defendant, and so it is unfair for the government to  
5 be pointing at nonparties and blaming nonparties for the  
6 delays when it is within the authority's -- it is within the  
7 authority of the defendants that are before this Court to  
8 execute the relief that this Court has granted. So, in  
9 addition to the DHS revisions that this Court proposed, there  
10 are discrete injunctive elements that if the Court -- I'm  
11 sorry -- if the federal government refuses to make any  
12 alterations, there are a few discrete injunctive elements  
13 that this Court could issue in short order. One of those is  
14 with regard to the inclusion standard. This Court said, "The  
15 vagueness of the standard for inclusion in the TSDB, coupled  
16 with the lack of any meaningful restraint on what constitutes  
17 grounds for placement on the watchlist, constitutes in  
18 essence the absence of any ascertainable standard for  
19 inclusion and exclusion."

20 This Court found that the inclusion standard  
21 essentially is not an inclusion standard. So it could enjoin  
22 the use of the current inclusion standard, and it's up to the  
23 government to come up with something new, and then if they  
24 come up with something new, it will be reviewed in normal  
25 course.

1 THE COURT: All right.

2 MR. ABBAS: Thank you, Your Honor.

3 THE COURT: Counsel, I will give you the last word.

4 MR. HEALY: Just a couple of quick points, Your  
5 Honor.

6 Number one, the threshold question here is a hard  
7 one, and it's exactly the type of question that the Fourth  
8 Circuit might rule on. So that isn't exactly a response to  
9 something that plaintiff said, but it is another point I  
10 wanted to add.

11 With respect to the question of what plaintiff  
12 contends is a defective appeal, that question is not before  
13 this Court. We don't think that question has anything to do  
14 with the disputes before the Court.

15 Plaintiff's counsel mentioned that he believes the  
16 facts of *Abdi* were not comparable. Numerous of the injuries  
17 claimed in *Abdi* are exactly the same as numerous injuries  
18 claimed in this case. Yes, the Tenth Circuit distinguished  
19 some facts of this case, but the legal questions before the  
20 Court were very much the same, and so I don't think that that  
21 is any reason not to grant a stay.

22 *Fikre*, the case that Mr. Abbas mentioned, was a  
23 completely different circumstance in which the plaintiff in  
24 that case had been notified of his no-fly-list status already  
25 prior to the case -- you know, entirely before the

1 circumstance that Mr. Abbas is mentioning. Here, we have 20  
2 plaintiffs who have never been given notice of any status  
3 whatsoever, and so it presents a different circumstance.

4 With that and for the other reasons I have already  
5 mentioned, this Court should grant the stay.

6 Thank you.

7 THE COURT: Thank you.

8 I have reviewed the pleadings and issues in this case  
9 and the argument here. The Court is in a position to rule on  
10 these.

11 Here, the defendants have filed a motion to stay this  
12 Court's Order dated December 18, 2019, and also to recertify  
13 the Court's procedural due process claims pursuant to  
14 28 U.S.C. 1292(b).

15 In the Court's December 18th and December 27th order,  
16 the Court also directed the defendants to promptly review the  
17 listing of any named plaintiff currently listed in the TSDB,  
18 Terrorism Screening Database, according to different  
19 procedures to be added to a revised DHS TRIP process that are  
20 reasonably calculated to provide the required procedural due  
21 process, together with the creation of an adequate  
22 administrative record, with particular consideration given to  
23 the following factors: The threshold showing necessary to  
24 determine whether any plaintiff is entitled to such a review  
25 and the notice and explanation given to any plaintiff

1 determined not to meet that threshold; secondly, the notice  
2 and opportunity to respond to any derogatory information; the  
3 notice to be given plaintiffs with respect to their TSBD  
4 status upon completion of that review; and fourth, the  
5 opportunity for review and/or appeal of any adverse  
6 determination.

7 The Court further directed that the defendants  
8 disclose to the Court the revised procedures and the status  
9 of the named plaintiffs with respect to any TSDB listing at  
10 the conclusion of the ordered review, and further ordered  
11 that the submission of a status report within 45 days of the  
12 revised final order as to the revised DHS TRIP procedures and  
13 defendants' review of the plaintiffs' placement on the TSDB  
14 under those revised procedures.

15 On January 31, 2020, the defendants filed a notice of  
16 appeal from the Court's Orders dated December 18th and the  
17 judgment entered on December 19th, and also its order dated  
18 December 27, 2019, together with all prior orders and  
19 decisions that merge into those orders. The plaintiffs have  
20 opposed both motions.

21 On February 10th, the defendants filed a status  
22 report concerning the government's progress in developing the  
23 revised procedures with respect to the plaintiffs in this  
24 action. In that status report, the government advised that  
25 this review and development is being conducted at the agency

1 level and coordinated through the Watchlisting Advisory  
2 Council; and the government has taken the following steps to  
3 comply with the Court's revised final order:

4 First, the government has identified which, if any,  
5 of the plaintiffs are currently on the TSDB, and the  
6 Terrorist Screening Center has assessed the current status of  
7 any such individuals based on available information and has  
8 made whatever changes are necessary, if any.

9 Secondly, the government has commenced an  
10 inter-agency deliberative process to propose and evaluate  
11 options for revised procedures to be applied to a review of  
12 any plaintiffs' watchlist status, taking into consideration  
13 the four issues enumerated by the Court, as well as other  
14 concerns described in the Court's summary judgment opinion.  
15 Towards that end, members of the Watchlisting Advisory  
16 Council have begun the intra- and inter-agency deliberative  
17 process of evaluating the feasibility and policy implications  
18 of changes to the redress process and have already conducted  
19 multiple meetings to propose, discuss, and evaluate possible  
20 changes to the redress process or other changes to the  
21 watchlisting system, with a view towards better enabling the  
22 Watchlisting Advisory Council participants to present and  
23 evaluate options for addressing the revised final order, and  
24 agencies have formulated specific proposals for  
25 consideration.

1 Third, the Watchlisting Advisory Council is scheduled  
2 to convene for its first quarterly meeting within the next  
3 few weeks, at which it is anticipated they will discuss and  
4 evaluate specific proposals generated by ongoing deliberative  
5 process. And if the revised final order is not stayed, the  
6 defendants will be in a better position to estimate the  
7 completion of this process once the scheduled Watchlisting  
8 Advisory Meeting has taken place.

9 In evaluating the motion for a stay, the Court has  
10 considered the well-settled requirements for such a stay:  
11 First, whether the moving party has made a strong showing  
12 that it's likely to succeed on the merits; second, whether  
13 the applicant will be irreparably harmed/injured absent a  
14 stay; third, whether the issuance of the stay will  
15 substantially injure the other parties interested in the  
16 proceedings; and fourth, where the public interest lies.

17 Based on the record, the Court concludes, first, that  
18 the government has not made a sufficiently strong showing  
19 that it will succeed on the merits. In that regard, the  
20 Court emphasizes the important nature of this claim -- United  
21 States citizens who have neither been convicted nor charged  
22 with any crimes being placed on a secret government watchlist  
23 that is distributed to tens of thousands of law enforcement  
24 and non-law enforcement agencies both domestically and  
25 abroad, with no real opportunity to contest on what basis



1       they were placed on that list. Although the consequences of  
2       being placed on that list vary in degree and severity, there  
3       is no doubt that a person who is on that list, whether he  
4       knows it or not, has had his life affected in significant  
5       ways. In assessing the government's prospects on appeal, the  
6       Court has reviewed the Tenth Circuit case of *Abdi v. Wray*,  
7       which considered whether a particular plaintiff in that case  
8       had demonstrated a protectable liberty interest triggering  
9       procedural due process protections beyond those provided in  
10      the current DHS TRIP. Finding that the plaintiff had not  
11      sufficiently demonstrated injury from his placement on the  
12      watchlist, the Court specifically distinguished the facts in  
13      that case from those presented in this case with respect to  
14      at least some of the named plaintiffs without opining on the  
15      merits of this case.

16               It is also worth noting that, as the government  
17      conceded in the *Mohammed* case, the no-fly-list component of  
18      the watchlist represents an unprecedented application of  
19      Executive Branch authority in the name of national security  
20      through secret administrative proceedings based on  
21      undisclosed information. Much could be said about the  
22      watchlist itself, and the liberty interest analysis under  
23      *Mathews v. Eldridge* has not been squarely addressed by either  
24      the Fourth Circuit or the Supreme Court within the precise  
25      context of anything akin to the watchlist.

1           With respect to the second factor, whether the  
2           government will experience irreparable harm in the absence of  
3           a stay, the Court begins by observing that the Court's  
4           ordered appealed from does not by its term impose any  
5           immediate consequences on the government that threaten  
6           national security or any other significant government  
7           interest. Rather, the order simply directs the government to  
8           prepare and propose to the Court revised procedures in light  
9           of its resolution of those legal issues. One can say that  
10          the government is impacted by the effort necessary to engage  
11          in that process, but central to the Court's willingness to  
12          enter an appealable interlocutory order, under  
13          28 U.S.C. 2201, which was discretionary on the part of the  
14          Court, was the specific authorization, under Section 2202, to  
15          continue to deal with any remaining claims or any further or  
16          necessary relief based on the declarations and orders issued;  
17          and that an appeal as to the legal merits could proceed in  
18          tandem with the development of revised procedures with the  
19          Court having the ability to fashion, as necessary,  
20          appropriate orders pertaining to those revised procedures  
21          that protects any significant government national security  
22          interests pending the outcome of the appeals. And there is  
23          always the possibility that defendants, upon conducting their  
24          review, might conclude they could implement revised  
25          procedures independent of the outcome of the issues on

1 appeal.

2 This case has been pending for far longer than what  
3 typically happens in this court, and there is an interest in  
4 moving forward in a way that allows this case to resolve  
5 itself sufficiently. For those reasons, the Court concludes,  
6 for the reasons just mentioned, that the defendants have not  
7 made a sufficient showing it would suffer irreparable harm  
8 were the final order not stayed and they were required to  
9 continue what they have already substantially started.

10 On the other hand, the Court finds that a stay would  
11 seriously, if not irreparably, harm plaintiffs since it would  
12 delay the adoption of constitutionally adequate procedures  
13 for the Court's resolution of those issues affirmed on  
14 appeal.

15 Finally, for all of the reasons stated above, the  
16 Court finds that the public interest is served by not  
17 granting the stay. There is a public interest in resolving  
18 these very important issues as expeditiously as possible, and  
19 until the government proposes revised procedures for the  
20 Court to review following which it can enter orders which  
21 themselves can be appealed and consolidated with the pending  
22 issues on appeal, the matter will only drag on even longer  
23 than it has.

24 So for all the above reasons, the Court denies the  
25 motion to stay.

1           The Court will, however, recertify the procedural due  
2     process issue, which essentially duplicates the issue already  
3     presented by way of the revised final order. The Court,  
4     also, is going to review its prior order, and if it has not  
5     vacated that certification, it is going to recertify the  
6     remaining issues, and the plaintiffs can determine whether to  
7     appeal those issues as it deems appropriate. These  
8     certifications, again, will more efficiently consolidate this  
9     litigation going forward.

10           Finally, the Court, as inherent in the Court's  
11    rulings, will require the government to comply with the  
12    Court's revised final orders, the revised procedures, and  
13    will at this point require the government to submit its  
14    proposed revised procedures within 90 days absent a  
15    sufficient cause for further extensions. The defendants have  
16    been considering these issues for years, and under the  
17    circumstances, the Court believes 90 days is sufficient time  
18    for the defendants to complete their deliberative review. To  
19    the extent the defendants believe that these revised  
20    procedures or any other information required to be submitted  
21    to the Court should be placed under seal or submitted  
22    ex parte or in camera should accompany those submissions with  
23    an appropriate order.

24           So, for all those reasons, the Court denies the  
25    motion to stay, the Court grants the motion to recertify.

1 And the Court will issue an order.

2 Anything further?

3 MR. ABBAS: No, Your Honor. Thank you.

4 MS. POWELL: Two quick questions, Your Honor.

5 THE COURT: Yes.

6 MS. POWELL: One, a point of clarification. Is the  
7 Court not ordering us currently to apply the revised  
8 procedures?

9 THE COURT: Yes.

10 MS. POWELL: And second, defendants also asked for a  
11 14-day administrative stay.

12 THE COURT: I don't see any need for that. Nothing  
13 is going to happen within 14 days. You can apply to the  
14 Fourth Circuit.

15 All right. Thank you.

16 Counsel is excused.

17 (Proceedings concluded)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Patricia A. Kaneshiro-Miller, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Patricia A. Kaneshiro-Miller

February 18, 2020

PATRICIA A. KANESHIRO-MILLER

DATE

/	25:6	
/s [1] - 30:8	ability [6] - 4:19, 5:3, 5:10, 5:12, 14:18, 26:19	
1	above-entitled [1] - 30:5	
10 [1] - 10:10 10:03 [1] - 2:2 10th [1] - 22:21 1292(b) [1] - 21:14 1292(b)(2) [3] - 15:2, 15:7, 15:17 14 [2] - 1:8, 29:13 14-day [1] - 29:11 16-375 [1] - 1:5 18 [2] - 21:12, 30:8 18th [2] - 21:15, 22:16 19th [1] - 22:17 1:16-CV-375 [1] - 2:3	abroad [1] - 24:25	
	absence [2] - 19:18, 26:2	
	absent [4] - 10:20, 24:13, 28:14	apologize [1] - 4:6
	abstract [1] - 7:14	appeal [32] - 2:25, 3:8, 3:20, 3:22, 3:24, 5:5, 6:20, 8:11, 8:25, 9:17, 10:14, 10:23, 11:15, 13:14, 13:15, 13:21, 15:6, 16:6, 16:7, 16:9, 16:16, 16:22, 20:12, 22:5, 22:16, 25:5, 26:17, 27:1, 27:14, 27:22, 28:7
	accompany [1] - 28:22	appealable [1] - 26:12
	according [2] - 5:21, 21:18	appealed [4] - 13:18, 13:20, 26:4, 27:21
	act [1] - 7:14	appealing [2] - 3:21, 16:19
	action [2] - 13:20, 22:24	appeals [2] - 10:21, 26:22
	Action [1] - 2:3	Appeals [1] - 14:3
	actor [1] - 18:23	APPEARANCES [1] - 1:13
2	add [2] - 14:25, 20:10	appearances [1] - 2:5
20 [1] - 21:1 2019 [2] - 21:12, 22:18 2020 [3] - 1:8, 22:15, 30:8 2201 [1] - 26:13 2202 [1] - 26:14 27 [1] - 22:18 27th [2] - 3:3, 21:15 28 [2] - 21:14, 26:13	added [2] - 5:22, 21:19	appellant [1] - 17:14
	addition [1] - 19:9	applicant [1] - 24:13
	additional [1] - 5:22	application [2] - 6:21, 25:18
	address [1] - 7:4	applied [1] - 23:11
	addressed [1] - 25:23	apply [7] - 4:24, 5:14, 6:8, 9:21, 13:6, 29:7, 29:13
	addressing [1] - 23:23	applying [1] - 7:7
	adequacy [1] - 5:18	approach [1] - 15:9
	adequate [3] - 15:6, 21:21, 27:12	appropriate [4] - 5:4, 26:20, 28:7, 28:23
	adjust [1] - 15:24	argue [1] - 15:16
	administrative [3] - 21:22, 25:20, 29:11	arguing [3] - 13:21, 14:2, 16:10
3	adoption [1] - 27:12	argument [1] - 21:9
31 [1] - 22:15	adversaries [2] - 12:3, 14:14	arguments [1] - 14:6
4	adverse [2] - 6:20, 22:5	ascertainable [1] - 19:18
45 [1] - 22:11 4th [2] - 3:12, 15:25	advised [1] - 22:24	aspects [1] - 9:7
	advisory [1] - 7:11	assembled [1] - 17:15
5	Advisory [7] - 9:4, 18:22, 23:1, 23:15, 23:22, 24:1, 24:8	assessed [1] - 23:6
500 [1] - 18:8	affect [1] - 6:1	assessing [1] - 25:5
6	affected [1] - 25:4	attached [1] - 11:25
60 [1] - 18:9 66 [1] - 11:25	affects [1] - 6:3	attorneys [1] - 18:6
	affirmed [1] - 27:13	authority [3] - 16:11, 19:7, 25:19
9	agencies [3] - 8:1, 23:24, 24:24	authority's [1] - 19:6
90 [2] - 28:14, 28:17	agency [4] - 18:8, 22:25, 23:10, 23:16	authorization [1] - 26:14
A	agree [1] - 9:20	available [1] - 23:7
a.m [1] - 2:2 Abbas [6] - 1:17, 2:16, 2:21, 15:21, 20:22, 21:1 ABBAS [12] - 2:15, 2:24, 3:7, 3:20, 4:1, 4:4, 4:8, 4:14, 15:22, 16:17, 20:2, 29:3 Abdi [5] - 17:13, 17:14, 20:16, 20:17,	aided [1] - 1:23	B
	akin [1] - 25:25	balance [3] - 10:3, 11:2, 11:6
	AI [1] - 10:9	balancing [2] - 10:1, 10:10
	al [4] - 1:4, 1:8, 2:4	based [4] - 23:7, 24:17, 25:20, 26:16
	ALEXANDRIA [1] - 1:3	bases [1] - 15:15
	Alexandria [1] - 1:7	basis [2] - 15:14, 24:25
	allow [2] - 4:22, 12:15	BEFORE [1] - 1:12
	allows [1] - 27:4	begins [1] - 26:3
	alterations [1] - 19:12	begun [1] - 23:16
	Amy [2] - 1:15, 2:7	believes [2] - 20:15, 28:17
	analogous [1] - 17:14	belts [1] - 15:8
PATRICIA A. KANESHIRO-MILLER, RMR, CRR OFFICIAL COURT REPORTER UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA	analysis [1] - 25:22	belts-and-suspenders [1] - 15:8
	analyze [1] - 15:18	better [2] - 23:21, 24:6
	ANAS [1] - 1:4	beyond [1] - 25:9
	ancillary [1] - 4:11	bit [1] - 18:21
	answer [1] - 2:13	blaming [1] - 19:5
	ANTHONY [1] - 1:12	Branch [1] - 25:19
	anticipated [1] - 24:3	
	anyways [1] - 16:25	

**brief** [1] - 15:23  
**briefing** [1] - 16:1  
**briefs** [1] - 15:13  
**build** [1] - 18:15

## C

**calculated** [1] - 21:20  
**camera** [1] - 28:22  
**case** [36] - 8:10, 8:14, 8:20, 9:19, 9:23, 10:9, 10:11, 10:12, 10:14, 13:14, 13:20, 13:22, 13:25, 14:5, 14:20, 15:10, 15:20, 16:12, 17:11, 17:13, 18:1, 18:2, 20:18, 20:19, 20:22, 20:24, 20:25, 21:8, 25:6, 25:7, 25:13, 25:15, 25:17, 27:2, 27:4  
**Center** [1] - 23:6  
**central** [1] - 26:11  
**certainly** [2] - 5:9, 5:11  
**CERTIFICATE** [1] - 30:1  
**certification** [7] - 14:24, 15:8, 16:6, 16:9, 16:15, 16:25, 28:5  
**certifications** [1] - 28:8  
**certified** [4] - 2:23, 4:3, 4:4, 16:14  
**certifies** [1] - 3:16  
**certify** [5] - 2:25, 3:8, 15:16, 16:11, 30:3  
**certifying** [1] - 15:3  
**chance** [1] - 11:16  
**change** [3] - 7:6, 8:19, 10:8  
**changes** [4] - 23:8, 23:18, 23:20  
**changing** [1] - 11:11  
**charged** [1] - 24:21  
**CHARLES** [1] - 1:7  
**choice** [1] - 18:17  
**chooses** [2] - 16:10, 19:1  
**Christopher** [2] - 1:15, 2:8  
**circuit** [2] - 8:8, 8:21  
**Circuit** [19] - 4:20, 4:22, 9:2, 9:18, 10:21, 11:17, 15:4, 15:10, 15:17, 16:25, 17:1, 17:6, 17:12, 20:8, 20:18, 25:6, 25:24, 29:14  
**circumstance** [3] - 20:23, 21:1, 21:3  
**circumstances** [2] - 16:12, 28:17  
**cited** [1] - 10:10  
**citizens** [1] - 24:21  
**Civil** [2] - 1:5, 2:3  
**claim** [12] - 2:20, 3:5, 3:19, 4:5, 4:9, 4:10, 16:24, 17:2, 17:3, 17:4, 17:5, 24:20  
**claimed** [2] - 20:17, 20:18  
**claims** [4] - 3:21, 3:22, 21:13, 26:15  
**clarification** [1] - 29:6  
**clear** [2] - 8:16, 15:7  
**CLERK** [1] - 2:3  
**collapsing** [1] - 5:1  
**coming** [2] - 8:1, 12:7  
**commenced** [1] - 23:9  
**companies** [1] - 18:8  
**comparable** [2] - 17:15, 20:16

**complete** [1] - 28:18  
**completely** [2] - 3:2, 20:23  
**completion** [3] - 6:19, 22:4, 24:7  
**comply** [3] - 3:9, 23:3, 28:11  
**complying** [3] - 9:15, 14:1  
**component** [3] - 12:6, 12:12, 25:17  
**computer** [1] - 1:23  
**computer-aided** [1] - 1:23  
**conceded** [1] - 25:17  
**concerning** [1] - 22:22  
**concerns** [3] - 5:5, 14:11, 23:14  
**conclude** [1] - 26:24  
**concluded** [1] - 29:17  
**concludes** [2] - 24:17, 27:5  
**conclusion** [3] - 8:9, 9:19, 22:10  
**conducted** [2] - 22:25, 23:18  
**conducting** [1] - 26:23  
**consequence** [1] - 12:11  
**consequences** [2] - 25:1, 26:5  
**consider** [4] - 6:13, 9:6, 9:22, 14:15  
**consideration** [6] - 6:21, 10:18, 11:22, 21:22, 23:12, 23:25  
**considerations** [2] - 6:11, 6:12  
**considered** [3] - 14:17, 24:10, 25:7  
**considering** [1] - 28:16  
**consistent** [1] - 14:11  
**consistently** [1] - 14:7  
**consolidate** [1] - 28:8  
**consolidated** [1] - 27:21  
**constitutes** [2] - 19:16, 19:17  
**Constitution** [1] - 18:17  
**constitutional** [1] - 5:18  
**constitutionally** [1] - 27:12  
**consuming** [3] - 9:13, 18:13, 18:19  
**contemplates** [1] - 11:21  
**contends** [1] - 20:12  
**contest** [1] - 24:25  
**context** [1] - 25:25  
**continue** [4] - 7:1, 11:10, 26:15, 27:9  
**continuing** [1] - 10:13  
**controls** [1] - 18:25  
**convene** [1] - 24:2  
**convicted** [1] - 24:21  
**coordinated** [1] - 23:1  
**Coppolino** [2] - 1:16, 2:9  
**correct** [3] - 6:7, 9:5, 30:4  
**Council** [6] - 9:4, 18:22, 23:2, 23:16, 23:22, 24:1  
**counsel** [6] - 2:5, 2:8, 16:20, 20:3, 20:15, 29:16  
**countries** [1] - 18:9  
**counts** [1] - 16:22  
**couple** [3] - 7:5, 7:8, 20:4  
**coupled** [1] - 19:15  
**course** [1] - 19:25  
**COURT** [43] - 1:2, 2:10, 2:14, 2:18, 3:6, 3:15, 3:24, 4:3, 4:7, 4:12, 4:15, 4:17, 5:1, 5:9, 5:16, 5:24, 6:1, 6:5, 6:24, 7:16, 7:23, 8:13, 8:18, 9:4, 9:9, 9:11, 12:5,

12:19, 12:25, 13:24, 14:8, 14:23, 15:3, 15:11, 15:21, 16:14, 20:1, 20:3, 21:7, 29:5, 29:9, 29:12, 30:1  
**court** [6] - 8:8, 8:21, 8:22, 17:7, 18:3, 27:3  
**Court** [71] - 1:20, 2:13, 2:22, 2:25, 3:1, 3:4, 3:16, 3:18, 4:9, 4:11, 5:2, 5:3, 5:10, 5:11, 5:17, 6:12, 7:11, 7:19, 11:4, 11:15, 14:3, 16:3, 16:8, 16:10, 16:18, 17:12, 17:25, 18:5, 18:17, 19:7, 19:8, 19:9, 19:10, 19:13, 19:14, 19:20, 20:13, 20:14, 20:20, 21:5, 21:9, 21:16, 22:7, 22:8, 23:13, 24:9, 24:17, 24:20, 25:6, 25:12, 25:24, 26:3, 26:8, 26:14, 26:19, 27:5, 27:10, 27:16, 27:20, 27:24, 28:1, 28:3, 28:10, 28:17, 28:21, 28:24, 28:25, 29:1, 29:7  
**Court's** [22] - 2:11, 3:3, 3:11, 5:8, 7:4, 7:14, 15:25, 16:4, 17:9, 18:4, 18:9, 21:12, 21:13, 21:15, 22:16, 23:3, 23:14, 26:3, 26:11, 27:13, 28:10, 28:12  
**courts** [1] - 8:7  
**create** [5] - 7:8, 7:10, 7:14, 10:6, 12:24  
**creation** [1] - 21:21  
**crimes** [1] - 24:22  
**criteria** [2] - 12:7, 12:14  
**critical** [2] - 12:6, 12:12  
**CRR** [1] - 1:20  
**current** [5] - 4:20, 15:5, 19:22, 23:6, 25:10

## D

**damage** [1] - 4:21  
**dangerous** [1] - 4:24  
**database** [1] - 19:1  
**Database** [1] - 21:18  
**DATE** [1] - 30:10  
**dated** [3] - 21:12, 22:16, 22:17  
**days** [4] - 22:11, 28:14, 28:17, 29:13  
**deadlines** [1] - 18:10  
**deal** [2] - 14:25, 26:15  
**DEC** [1] - 10:10  
**December** [7] - 3:3, 21:12, 21:15, 22:16, 22:17, 22:18  
**decided** [1] - 11:3  
**decides** [1] - 19:2  
**decision** [5] - 7:4, 15:25, 16:5, 18:11, 18:25  
**decisions** [1] - 22:19  
**Declaration** [1] - 11:25  
**declarations** [1] - 26:16  
**deems** [1] - 28:7  
**deeply** [1] - 14:12  
**defective** [2] - 16:7, 20:12  
**defend** [1] - 4:19  
**defendant** [1] - 19:4  
**defendant's** [1] - 14:20  
**Defendants** [2] - 1:9, 1:17  
**defendants** [22] - 4:13, 5:20, 10:2,



10:18, 11:15, 13:12, 14:17, 14:23,  
18:16, 19:7, 21:11, 21:16, 22:7, 22:15,  
22:21, 24:6, 26:23, 27:6, 28:15, 28:18,  
28:19, 29:10  
**defendants'** [2] - 9:1, 22:13  
**degree** [1] - 25:2  
**delay** [1] - 27:12  
**delays** [1] - 19:6  
**deliberative** [4] - 23:10, 23:16, 24:4,  
28:18  
**demonstrated** [2] - 25:8, 25:11  
**demonstration** [1] - 12:10  
**denies** [2] - 27:24, 28:24  
**deprivation** [1] - 11:7  
**DEPUTY** [1] - 2:3  
**derogatory** [2] - 6:17, 22:2  
**described** [2] - 11:24, 23:14  
**describes** [1] - 12:1  
**detained** [1] - 10:12  
**determination** [3] - 6:20, 14:13, 22:6  
**determine** [3] - 6:14, 21:24, 28:6  
**determined** [3] - 6:16, 11:23, 22:1  
**develop** [3] - 5:2, 5:13, 6:8  
**developing** [2] - 7:17, 22:22  
**development** [2] - 22:25, 26:18  
**DHS** [7] - 3:10, 5:22, 11:11, 19:9,  
21:19, 22:12, 25:10  
**different** [7] - 8:4, 9:21, 10:22, 11:5,  
20:23, 21:3, 21:18  
**difficult** [2] - 12:17, 14:12  
**directed** [2] - 21:16, 22:7  
**directs** [1] - 26:7  
**disagree** [4] - 8:9, 8:17, 9:18, 15:10  
**disclose** [4] - 6:9, 17:24, 18:5, 22:8  
**disclosure** [4] - 6:10, 6:23, 6:24, 17:24  
**disclosures** [6] - 6:5, 11:13, 11:18,  
11:19, 14:2, 14:18  
**discrete** [2] - 19:10, 19:12  
**discretionary** [1] - 26:13  
**discretions** [1] - 16:8  
**discuss** [2] - 23:19, 24:3  
**dismissed** [2] - 3:21, 16:22  
**dispose** [1] - 4:11  
**disputes** [1] - 20:14  
**disseminated** [1] - 18:7  
**distinguished** [2] - 20:18, 25:12  
**distributed** [1] - 24:23  
**district** [2] - 8:22, 17:7  
**DISTRICT** [3] - 1:2, 1:2, 1:12  
**divergence** [1] - 15:18  
**DIVISION** [1] - 1:3  
**domestically** [1] - 24:24  
**done** [2] - 7:2, 14:7  
**doubt** [1] - 25:3  
**down** [2] - 9:3, 9:16  
**draft** [1] - 8:2  
**drag** [1] - 27:22  
**due** [15] - 2:19, 3:5, 3:17, 3:18, 4:1,  
4:5, 4:9, 11:8, 16:23, 17:3, 17:5, 21:13,

21:20, 25:9, 28:1  
**duplicates** [1] - 28:2

## E

**EASTERN** [1] - 1:2  
**efficiently** [1] - 28:8  
**effort** [3] - 9:16, 9:20, 26:10  
**either** [1] - 25:23  
**Eldridge** [1] - 25:23  
**elements** [2] - 19:10, 19:12  
**ELHADY** [1] - 1:4  
**Elhady** [1] - 2:4  
**emphasize** [1] - 15:12  
**emphasizes** [1] - 24:20  
**enabling** [1] - 23:21  
**end** [1] - 23:15  
**enforcement** [3] - 18:8, 24:23, 24:24  
**engage** [1] - 26:10  
**engaged** [2] - 15:1, 15:13  
**engaging** [1] - 7:11  
**enhanced** [2] - 12:25, 13:1  
**enjoin** [1] - 19:21  
**enter** [4] - 3:4, 5:4, 26:12, 27:20  
**entered** [1] - 22:17  
**entirely** [1] - 20:25  
**entitled** [3] - 6:15, 21:24, 30:5  
**enumerated** [1] - 23:13  
**equal** [3] - 3:19, 4:2, 16:22  
**especially** [1] - 16:19  
**essence** [2] - 14:16, 19:18  
**essentially** [3] - 14:5, 19:21, 28:2  
**estimate** [1] - 24:6  
**et** [4] - 1:4, 1:8, 2:4  
**evading** [1] - 18:11  
**evaluate** [4] - 23:10, 23:19, 23:23, 24:4  
**evaluating** [2] - 23:17, 24:9  
**ex** [1] - 28:22  
**exactly** [5] - 13:17, 16:17, 20:7, 20:8,  
20:17  
**exclusion** [1] - 19:19  
**excused** [1] - 29:16  
**execute** [1] - 19:8  
**executes** [1] - 3:11  
**Executive** [1] - 25:19  
**exhaustion** [1] - 10:20  
**exists** [1] - 17:2  
**expect** [1] - 8:1  
**expeditiously** [1] - 27:18  
**expend** [1] - 8:1  
**experience** [1] - 26:2  
**explained** [2] - 11:13, 13:16  
**explanation** [3] - 6:15, 11:22, 21:25  
**explicitly** [1] - 17:13  
**extensions** [1] - 28:15  
**extent** [1] - 28:19

## F

**faced** [1] - 13:17  
**facing** [1] - 10:1  
**fact** [4] - 7:12, 9:17, 10:6, 13:13  
**factor** [1] - 26:1  
**factors** [3] - 6:21, 9:22, 21:23  
**facts** [7] - 17:14, 17:15, 17:17, 18:24,  
20:16, 20:19, 25:12  
**factual** [2] - 17:10, 17:11  
**far** [1] - 27:2  
**fashion** [1] - 26:19  
**favor** [5] - 8:21, 9:19, 9:21, 11:3, 14:20  
**FBI** [5] - 18:25, 19:1, 19:2, 19:4  
**FBI's** [1] - 18:24  
**feasibility** [1] - 23:17  
**February** [3] - 1:8, 22:21, 30:8  
**federal** [4] - 18:3, 18:15, 18:20, 19:11  
**few** [2] - 19:12, 24:3  
**fight** [1] - 14:19  
**Fikre** [2] - 18:2, 20:22  
**file** [1] - 16:22  
**filed** [4] - 16:5, 21:11, 22:15, 22:21  
**final** [12] - 3:4, 3:21, 10:20, 11:16,  
18:11, 22:12, 23:3, 23:23, 24:5, 27:8,  
28:3, 28:12  
**finally** [2] - 27:15, 28:10  
**firm** [3] - 3:11, 18:9, 18:10  
**first** [6] - 4:12, 7:21, 23:4, 24:2, 24:11,  
24:17  
**five** [1] - 12:23  
**fly** [2] - 20:24, 25:17  
**following** [3] - 21:23, 23:2, 27:20  
**FOR** [1] - 1:2  
**forced** [1] - 13:19  
**forces** [1] - 13:16  
**foregoing** [1] - 30:4  
**foreign** [1] - 18:9  
**formulated** [1] - 23:24  
**forward** [3] - 13:13, 27:4, 28:9  
**four** [1] - 23:13  
**Fourth** [16] - 4:20, 4:22, 9:2, 9:17,  
9:18, 10:21, 11:16, 15:4, 15:10, 15:17,  
16:24, 17:1, 17:6, 20:7, 25:24, 29:14  
**fourth** [2] - 22:4, 24:16  
**front** [1] - 17:19  
**fully** [1] - 16:8

## G

**Gadeir** [2] - 1:17, 2:16  
**generated** [1] - 24:4  
**given** [11] - 6:15, 6:18, 11:22, 13:13,  
14:19, 16:12, 21:2, 21:22, 21:25, 22:3  
**global** [2] - 18:15, 18:18  
**government** [42] - 2:7, 3:8, 4:18, 5:13,  
6:13, 7:1, 7:13, 9:22, 11:9, 12:4, 12:8,  
13:15, 13:19, 14:1, 14:15, 15:22, 15:23,  
17:4, 17:15, 17:22, 18:7, 18:15, 18:21,

19:4, 19:11, 19:23, 22:24, 23:2, 23:4, 23:9, 24:18, 24:22, 25:16, 26:2, 26:5, 26:6, 26:7, 26:10, 26:21, 27:19, 28:11, 28:13

**Government** [1] - 4:23  
**government's** [3] - 4:24, 22:22, 25:5  
**grandmother** [1] - 17:19  
**grant** [3] - 16:9, 20:21, 21:5  
**granted** [1] - 19:8  
**granting** [1] - 27:17  
**grants** [1] - 28:25  
**gravity** [1] - 14:21  
**great** [1] - 14:25  
**Groh** [1] - 11:24  
**grounds** [1] - 19:17

## H

**habeas** [1] - 10:12  
**hand** [1] - 27:10  
**handcuffed** [1] - 17:18  
**hands** [1] - 17:9  
**hangs** [1] - 15:19  
**hard** [1] - 20:6  
**harm** [20] - 5:15, 6:25, 9:24, 10:2, 10:3, 10:4, 10:13, 10:24, 11:1, 11:14, 12:21, 13:7, 13:11, 13:23, 14:18, 17:16, 17:20, 26:2, 27:7, 27:11  
**harmed** [2] - 11:9, 13:13  
**harmed/injured** [1] - 24:13  
**harms** [2] - 11:2, 13:6  
**Hassan** [2] - 17:17, 17:18  
**HEALY** [22] - 4:16, 4:18, 5:7, 5:11, 5:19, 5:25, 6:3, 6:7, 7:5, 7:21, 7:24, 8:16, 8:19, 9:7, 9:10, 9:12, 12:17, 12:20, 13:1, 14:1, 14:9, 20:4  
**Healy** [3] - 1:15, 2:8, 2:11  
**hear** [2] - 4:12, 14:23  
**HEARING** [1] - 1:11  
**Honor** [28] - 2:8, 2:15, 2:24, 3:7, 4:4, 4:16, 4:18, 5:7, 5:12, 5:19, 7:6, 8:3, 8:17, 9:20, 10:1, 10:9, 10:25, 12:18, 13:12, 14:9, 15:1, 15:7, 16:17, 20:2, 20:5, 29:3, 29:4  
**Honor's** [3] - 8:9, 9:18, 11:18  
**HONORABLE** [1] - 1:12  
**hospital** [1] - 17:20  
**hypothetical** [1] - 12:24

## I

**identified** [1] - 23:4  
**illegal** [3] - 17:18, 18:12, 18:19  
**immediate** [1] - 26:5  
**impact** [1] - 12:14  
**impacted** [1] - 26:10  
**implement** [2] - 10:19, 26:24  
**implementation** [1] - 7:18  
**implications** [1] - 23:17  
**implicit** [1] - 3:3

**important** [4] - 4:22, 16:19, 24:20, 27:18  
**impose** [1] - 26:4  
**include** [1] - 6:13  
**inclusion** [7] - 19:1, 19:14, 19:15, 19:19, 19:20, 19:21, 19:22  
**independent** [3] - 15:14, 18:23, 26:25  
**indicate** [1] - 11:2  
**individuals** [2] - 13:4, 23:7  
**inform** [1] - 12:3  
**information** [7] - 6:17, 14:14, 19:2, 22:2, 23:7, 25:21, 28:20  
**inherent** [1] - 28:10  
**injunction** [2] - 3:11, 13:15  
**injunctions** [1] - 16:1  
**injunctive** [2] - 19:10, 19:12  
**injure** [1] - 24:15  
**injuries** [2] - 20:16, 20:17  
**injury** [1] - 25:11  
**input** [1] - 9:2  
**instead** [2] - 9:21, 16:5  
**intend** [1] - 3:20  
**intending** [2] - 3:9, 3:22  
**inter** [2] - 23:10, 23:16  
**inter-agency** [2] - 23:10, 23:16  
**interest** [10] - 10:3, 12:4, 24:16, 25:8, 25:22, 26:7, 27:3, 27:16, 27:17  
**interested** [1] - 24:15  
**interests** [4] - 10:14, 11:6, 11:7, 26:22  
**interlocutory** [3] - 16:9, 16:25, 26:12  
**intervention** [2] - 3:11, 18:10  
**intra** [1] - 23:16  
**irreparable** [9] - 5:15, 6:25, 9:24, 10:2, 10:24, 11:1, 13:23, 26:2, 27:7  
**irreparably** [4] - 11:9, 13:13, 24:13, 27:11  
**irrespective** [1] - 3:16  
**irreversible** [1] - 4:21  
**issuance** [1] - 24:14  
**issue** [11] - 3:1, 3:17, 7:20, 8:13, 14:21, 14:24, 19:13, 28:2, 29:1  
**issued** [1] - 26:16  
**issues** [17] - 2:23, 7:17, 9:6, 15:6, 15:9, 15:19, 15:20, 21:8, 23:13, 26:9, 26:25, 27:13, 27:18, 27:22, 28:6, 28:7, 28:16  
**itself** [5] - 6:1, 6:3, 11:24, 25:22, 27:5

## J

**January** [1] - 22:15  
**job** [1] - 9:11  
**JUDGE** [1] - 1:12  
**judgment** [8] - 3:4, 11:1, 11:3, 11:5, 12:1, 14:17, 22:17, 23:14  
**judicial** [1] - 9:1  
**jurisdiction** [2] - 15:14, 15:15  
**jurisdictional** [1] - 7:10  
**Justin** [2] - 1:18, 2:16

## K

**KABLE** [1] - 1:7  
**Kaneshiro** [2] - 30:3, 30:8  
**KANESHIRO** [2] - 1:20, 30:10  
**Kaneshiro-Miller** [2] - 30:3, 30:8  
**KANESHIRO-MILLER** [2] - 1:20, 30:10  
**keep** [1] - 18:11  
**keeps** [1] - 12:8  
**kind** [3] - 2:25, 3:9, 10:10  
**kinds** [1] - 12:3  
**knows** [1] - 25:4

## L

**lack** [1] - 19:16  
**lacks** [1] - 16:10  
**large** [2] - 9:12, 18:13  
**last** [3] - 10:17, 12:23, 20:3  
**law** [4] - 14:20, 18:7, 24:23, 24:24  
**learn** [3] - 13:4, 13:5, 13:9  
**least** [4] - 8:23, 8:25, 14:19, 25:14  
**legal** [6] - 7:9, 14:20, 15:18, 20:19, 26:9, 26:17  
**legally** [1] - 8:2  
**level** [1] - 23:1  
**liability** [1] - 17:5  
**liberty** [3] - 11:7, 25:8, 25:22  
**lies** [1] - 24:16  
**life** [1] - 25:4  
**light** [3] - 15:24, 16:4, 26:8  
**likelihood** [2] - 8:6, 9:25  
**likely** [4] - 8:15, 13:14, 13:22, 24:12  
**likewise** [1] - 14:14  
**list** [10] - 12:2, 12:10, 12:12, 13:3, 20:24, 25:1, 25:2, 25:3, 25:17  
**listed** [2] - 5:21, 21:17  
**listing** [3] - 5:20, 21:17, 22:9  
**litigation** [2] - 18:2, 28:9  
**live** [1] - 17:3  
**look** [3] - 4:7, 10:2, 10:21  
**lost** [1] - 15:25

## M

**Maqaleh** [1] - 10:9  
**Mathews** [1] - 25:23  
**matter** [7] - 2:25, 4:8, 12:15, 16:18, 18:3, 27:22, 30:5  
**meaningful** [2] - 15:18, 19:16  
**meet** [3] - 6:16, 11:23, 22:1  
**meeting** [1] - 24:2  
**Meeting** [1] - 24:8  
**meetings** [1] - 23:19  
**members** [1] - 23:15  
**mentioned** [4] - 20:15, 20:22, 21:5, 27:6  
**mentioning** [1] - 21:1  
**merge** [1] - 22:19

<p><b>merited</b> [2] - 10:15, 10:16 <b>merits</b> [10] - 8:7, 8:11, 8:24, 9:25, 14:21, 24:12, 24:19, 25:15, 26:17 <b>midst</b> [1] - 10:23 <b>might</b> [7] - 7:11, 10:21, 13:2, 13:3, 14:3, 20:8, 26:24 <b>militate</b> [1] - 8:21 <b>Miller</b> [2] - 30:3, 30:8 <b>MILLER</b> [2] - 1:20, 30:10 <b>mind</b> [1] - 8:19 <b>minimal</b> [2] - 10:5, 17:16 <b>modicum</b> [1] - 6:23 <b>modify</b> [1] - 13:16 <b>Mohammed</b> [1] - 25:17 <b>months</b> [2] - 8:1, 12:23 <b>moot</b> [4] - 13:14, 13:22, 13:25, 14:5 <b>morning</b> [1] - 2:15 <b>MOTION</b> [1] - 1:11 <b>motion</b> [11] - 2:12, 2:18, 2:19, 4:15, 10:1, 12:1, 21:11, 24:9, 27:25, 28:25 <b>motions</b> [2] - 2:17, 22:20 <b>moved</b> [1] - 4:18 <b>moving</b> [4] - 13:13, 17:23, 24:11, 27:4 <b>MR</b> [34] - 2:15, 2:24, 3:7, 3:20, 4:1, 4:4, 4:8, 4:14, 4:16, 4:18, 5:7, 5:11, 5:19, 5:25, 6:3, 6:7, 7:5, 7:21, 7:24, 8:16, 8:19, 9:7, 9:10, 9:12, 12:17, 12:20, 13:1, 14:1, 14:9, 15:22, 16:17, 20:2, 20:4, 29:3 <b>MS</b> [8] - 2:7, 2:11, 14:25, 15:5, 15:12, 29:4, 29:6, 29:10 <b>multiple</b> [2] - 8:1, 23:19</p>	<p><b>nonparties</b> [2] - 19:5 <b>normal</b> [1] - 19:24 <b>note</b> [1] - 2:5 <b>noted</b> [1] - 17:12 <b>nothing</b> [1] - 29:12 <b>notice</b> [12] - 6:15, 6:16, 6:17, 11:22, 11:24, 14:13, 15:5, 21:2, 21:25, 22:1, 22:3, 22:15 <b>notification</b> [2] - 12:1, 13:10 <b>notified</b> [1] - 20:24 <b>noting</b> [1] - 25:16 <b>nought</b> [1] - 9:20 <b>number</b> [2] - 7:9, 20:6 <b>Number</b> [1] - 2:3 <b>numerous</b> [3] - 8:22, 20:16, 20:17</p>	<p><b>P</b></p> <p><b>page</b> [1] - 10:10 <b>papers</b> [1] - 15:1 <b>paragraph</b> [1] - 11:25 <b>part</b> [2] - 3:23, 26:13 <b>parte</b> [1] - 28:22 <b>participants</b> [2] - 19:3, 23:22 <b>particular</b> [13] - 6:10, 6:11, 6:21, 8:8, 9:22, 10:8, 10:11, 11:21, 12:2, 18:1, 21:22, 25:7 <b>particularly</b> [1] - 14:19 <b>parties</b> [1] - 24:15 <b>party</b> [2] - 11:6, 24:11 <b>Patricia</b> [2] - 30:3, 30:8 <b>PATRICIA</b> [2] - 1:20, 30:10 <b>pending</b> [6] - 5:5, 7:20, 18:3, 26:22, 27:2, 27:21 <b>people</b> [2] - 13:2, 13:9 <b>period</b> [1] - 3:24 <b>permission</b> [2] - 2:11, 18:5 <b>person</b> [3] - 12:2, 12:15, 25:3 <b>persons</b> [2] - 12:3, 13:6 <b>pertaining</b> [1] - 26:20 <b>piece</b> [5] - 6:24, 12:5, 17:6, 17:8 <b>pieces</b> [1] - 17:5 <b>Piehota</b> [1] - 2:4 <b>place</b> [1] - 24:8 <b>placed</b> [4] - 24:22, 25:1, 25:2, 28:21 <b>placement</b> [3] - 19:17, 22:13, 25:11 <b>plaintiff</b> [15] - 5:21, 6:14, 6:16, 10:13, 11:23, 12:2, 17:13, 20:9, 20:11, 20:23, 21:17, 21:24, 21:25, 25:7, 25:10 <b>plaintiff's</b> [2] - 10:8, 20:15 <b>plaintiffs</b> [36] - 2:16, 3:14, 4:25, 5:14, 6:6, 6:9, 6:10, 6:18, 6:22, 6:23, 7:8, 10:4, 10:11, 11:1, 11:19, 11:20, 13:14, 14:4, 14:11, 15:1, 15:13, 15:16, 17:16, 17:21, 18:14, 21:2, 22:3, 22:9, 22:19, 22:23, 23:5, 25:14, 27:11, 28:6 <b>Plaintiffs</b> [2] - 1:5, 1:15 <b>plaintiffs'</b> [2] - 22:13, 23:12 <b>pleadings</b> [1] - 21:8 <b>point</b> [12] - 3:25, 7:21, 7:24, 7:25, 8:4, 10:17, 13:12, 15:12, 16:21, 20:9, 28:13, 29:6 <b>pointing</b> [1] - 19:5 <b>points</b> [2] - 7:5, 20:4 <b>policy</b> [4] - 8:2, 10:19, 23:17 <b>position</b> [6] - 2:22, 2:24, 3:15, 18:2, 21:9, 24:6 <b>possibility</b> [1] - 26:23 <b>possible</b> [3] - 14:6, 23:19, 27:18 <b>potentially</b> [2] - 7:10, 13:25 <b>Powell</b> [2] - 1:15, 2:7 <b>POWELL</b> [8] - 2:7, 2:11, 14:25, 15:5, 15:12, 29:4, 29:6, 29:10 <b>powers</b> [1] - 7:13 <b>practical</b> [2] - 7:9, 10:17</p>
<p><b>N</b></p> <p><b>name</b> [1] - 25:19 <b>named</b> [4] - 5:21, 21:17, 22:9, 25:14 <b>narrower</b> [1] - 13:6 <b>narrowing</b> [1] - 13:8 <b>national</b> [14] - 4:21, 4:23, 6:2, 6:3, 10:13, 11:8, 11:10, 11:14, 13:11, 14:7, 14:11, 25:19, 26:6, 26:21 <b>nature</b> [1] - 24:20 <b>necessarily</b> [3] - 6:22, 10:7, 15:19 <b>necessary</b> [7] - 6:14, 8:3, 21:23, 23:8, 26:10, 26:16, 26:19 <b>need</b> [1] - 29:12 <b>needed</b> [1] - 3:12 <b>needs</b> [1] - 8:17 <b>never</b> [2] - 17:10, 21:2 <b>new</b> [6] - 4:24, 6:8, 7:7, 7:14, 19:23, 19:24 <b>next</b> [2] - 13:12, 24:2 <b>no-fly-list</b> [2] - 20:24, 25:17 <b>non</b> [2] - 13:9, 24:24 <b>non-law</b> [1] - 24:24 <b>non-status</b> [1] - 13:9 <b>nondelegation</b> [4] - 3:5, 3:19, 4:2, 16:23 <b>none</b> [1] - 10:7</p>	<p><b>O</b></p> <p><b>objective</b> [1] - 14:12 <b>observing</b> [1] - 26:3 <b>OF</b> [3] - 1:2, 1:11, 30:1 <b>offers</b> [1] - 6:12 <b>OFFICIAL</b> [1] - 30:1 <b>once</b> [1] - 24:7 <b>one</b> [15] - 4:10, 7:9, 7:17, 7:19, 7:24, 9:7, 9:13, 10:17, 11:5, 12:21, 19:13, 20:6, 20:7, 26:9, 29:6 <b>ongoing</b> [1] - 24:4 <b>opaqueness</b> [1] - 18:22 <b>opening</b> [1] - 12:1 <b>operating</b> [3] - 18:6, 18:18, 19:1 <b>opining</b> [1] - 25:14 <b>opinion</b> [5] - 3:12, 7:11, 8:17, 15:18, 23:14 <b>opinions</b> [3] - 8:8, 8:21, 8:22 <b>opportunity</b> [7] - 6:17, 6:19, 15:24, 16:3, 22:2, 22:5, 24:25 <b>opposed</b> [1] - 22:20 <b>opposing</b> [1] - 16:20 <b>opposition</b> [1] - 13:15 <b>options</b> [2] - 23:11, 23:23 <b>order</b> [26] - 3:4, 4:19, 5:8, 5:12, 5:16, 5:19, 6:9, 6:13, 7:6, 9:15, 11:18, 11:21, 19:13, 21:15, 22:12, 22:17, 23:3, 23:23, 24:5, 26:7, 26:12, 27:8, 28:3, 28:4, 28:23, 29:1 <b>Order</b> [1] - 21:12 <b>ordered</b> [12] - 4:23, 5:2, 6:7, 7:22, 8:4, 9:3, 10:6, 11:10, 14:16, 22:10, 26:4 <b>ordering</b> [1] - 29:7 <b>Orders</b> [1] - 22:16 <b>orders</b> [8] - 5:4, 6:12, 22:18, 22:19, 26:16, 26:20, 27:20, 28:12 <b>Oregon</b> [2] - 18:2, 18:3 <b>otherwise</b> [1] - 8:4 <b>outcome</b> [4] - 5:5, 7:20, 26:22, 26:25 <b>outstanding</b> [1] - 3:13 <b>overlooking</b> [1] - 17:17 <b>own</b> [1] - 18:4</p>	

**practices** [2] - 15:24, 16:4  
**precise** [1] - 25:24  
**prepare** [1] - 26:8  
**present** [5] - 2:12, 5:2, 5:17, 12:21, 23:22  
**presented** [2] - 25:13, 28:3  
**presenting** [1] - 2:17  
**presents** [2] - 12:17, 21:3  
**prevail** [2] - 8:15, 8:25  
**prevent** [1] - 4:20  
**previously** [2] - 2:23, 3:8  
**private** [1] - 18:8  
**problem** [1] - 12:9  
**problems** [3] - 7:8, 7:10, 7:13  
**procedural** [10] - 2:19, 3:17, 4:5, 4:9, 17:3, 17:5, 21:13, 21:20, 25:9, 28:1  
**procedure** [2] - 12:13, 13:10  
**procedures** [31] - 4:24, 5:3, 5:13, 5:14, 5:22, 7:2, 7:3, 7:7, 7:17, 7:18, 9:6, 11:12, 13:16, 14:2, 21:19, 22:8, 22:12, 22:14, 22:23, 23:11, 26:8, 26:18, 26:20, 26:25, 27:12, 27:19, 28:12, 28:14, 28:20, 29:8  
**proceed** [3] - 7:19, 11:15, 26:17  
**Proceedings** [2] - 1:22, 29:17  
**proceedings** [3] - 24:16, 25:20, 30:5  
**proceeds** [1] - 9:17  
**process** [46] - 2:20, 3:5, 3:17, 3:18, 4:2, 4:5, 4:9, 4:20, 5:1, 5:23, 6:8, 6:22, 7:14, 9:15, 9:23, 10:7, 10:19, 10:21, 10:22, 11:8, 11:11, 12:22, 13:4, 13:5, 14:10, 14:17, 16:23, 17:3, 17:5, 19:3, 21:13, 21:19, 21:21, 23:10, 23:17, 23:18, 23:20, 24:5, 24:7, 25:9, 26:11, 28:2  
**processing** [1] - 3:10  
**produced** [1] - 1:23  
**progress** [1] - 22:22  
**promptly** [2] - 5:20, 21:16  
**proposals** [2] - 23:24, 24:4  
**propose** [4] - 16:3, 23:10, 23:19, 26:8  
**proposed** [2] - 19:9, 28:14  
**proposes** [1] - 27:19  
**proposing** [2] - 7:17, 17:4  
**prospects** [1] - 25:5  
**protect** [1] - 4:19  
**protectable** [1] - 25:8  
**protecting** [1] - 5:4  
**protection** [3] - 3:19, 4:2, 16:23  
**protections** [1] - 25:9  
**protects** [1] - 26:21  
**provide** [4] - 14:4, 14:14, 19:2, 21:20  
**provided** [2] - 14:10, 25:9  
**prudential** [1] - 11:7  
**public** [4] - 10:3, 24:16, 27:16, 27:17  
**purpose** [1] - 11:6  
**purposes** [1] - 8:11  
**pursuant** [1] - 21:13  
**put** [1] - 16:25

## Q

**qualification** [1] - 12:7  
**qualify** [1] - 12:15  
**quarterly** [1] - 24:2  
**questions** [6] - 2:13, 4:3, 4:5, 4:22, 20:19, 29:4  
**quick** [2] - 20:4, 29:4  
**quite** [1] - 12:5

## R

**rather** [2] - 13:20, 26:7  
**reading** [2] - 5:8, 5:25  
**real** [2] - 13:19, 24:25  
**reason** [6] - 10:5, 12:20, 13:18, 15:16, 16:6, 20:21  
**reasonable** [1] - 7:25  
**reasonably** [1] - 21:20  
**reasons** [9] - 9:8, 10:15, 10:25, 21:4, 27:5, 27:6, 27:15, 27:24, 28:24  
**recertify** [8] - 2:19, 2:22, 3:17, 3:18, 21:12, 28:1, 28:5, 28:25  
**record** [6] - 2:6, 17:10, 17:11, 21:22, 24:17, 30:4  
**redress** [6] - 6:22, 13:16, 14:4, 14:16, 23:18, 23:20  
**refer** [1] - 10:9  
**refuses** [1] - 19:11  
**regard** [4] - 4:5, 18:22, 19:14, 24:19  
**regarding** [1] - 16:1  
**regards** [2] - 2:17, 3:4  
**relating** [1] - 9:6  
**relief** [3] - 3:13, 19:8, 26:16  
**reluctance** [2] - 17:24, 17:25  
**remaining** [3] - 15:20, 26:15, 28:6  
**remains** [1] - 3:13  
**remedies** [3] - 16:1, 17:6, 17:8  
**remedy** [2] - 3:1, 15:23  
**remedying** [1] - 11:7  
**remove** [1] - 7:7  
**reply** [1] - 16:21  
**report** [4] - 9:14, 22:11, 22:22, 22:24  
**reported** [1] - 1:22  
**REPORTER** [1] - 30:1  
**Reporter** [1] - 1:20  
**represents** [1] - 25:18  
**require** [4] - 6:23, 11:18, 28:11, 28:13  
**required** [8] - 8:3, 8:10, 11:20, 13:21, 14:3, 21:20, 27:8, 28:20  
**requirement** [2] - 7:7, 12:6  
**requirements** [1] - 24:10  
**requires** [2] - 5:13, 5:16  
**requiring** [3] - 6:25, 7:12, 7:13  
**reserving** [1] - 7:20  
**resolution** [2] - 26:9, 27:13  
**resolve** [1] - 27:4  
**resolved** [1] - 3:2  
**resolving** [1] - 27:17

**resources** [2] - 9:1  
**respect** [17] - 2:12, 5:7, 5:20, 6:18, 8:6, 10:18, 10:24, 10:25, 11:4, 11:17, 13:7, 20:11, 22:3, 22:9, 22:23, 25:13, 26:1  
**respectfully** [1] - 4:10  
**respond** [2] - 6:17, 22:2  
**response** [1] - 20:8  
**restraint** [1] - 19:16  
**result** [1] - 10:7  
**review** [20] - 5:17, 5:20, 6:15, 6:19, 6:20, 7:2, 7:15, 9:5, 21:16, 21:24, 22:4, 22:5, 22:10, 22:13, 22:25, 23:11, 26:24, 27:20, 28:4, 28:18  
**reviewed** [5] - 12:8, 12:16, 19:24, 21:8, 25:6  
**revised** [28] - 5:3, 5:22, 6:22, 7:3, 12:13, 14:16, 16:3, 21:19, 22:8, 22:12, 22:14, 22:23, 23:3, 23:11, 23:23, 24:5, 26:8, 26:18, 26:20, 26:24, 27:19, 28:3, 28:12, 28:14, 28:19, 29:7  
**revision** [1] - 3:10  
**revisions** [1] - 19:9  
**risk** [3] - 11:14, 13:19, 14:18  
**RMR** [1] - 1:20  
**road** [2] - 9:3, 9:16  
**rule** [5] - 4:22, 9:19, 9:21, 20:8, 21:9  
**ruling** [1] - 10:20  
**rulings** [1] - 28:11  
**run** [1] - 13:24  
**rushed** [1] - 17:20

## S

**Sadowsky** [2] - 1:18, 2:16  
**scheduled** [2] - 24:1, 24:7  
**Screening** [2] - 21:18, 23:6  
**screening** [2] - 12:25, 13:1  
**seal** [1] - 28:21  
**second** [4] - 7:20, 24:12, 26:1, 29:10  
**secondly** [2] - 22:1, 23:9  
**secret** [4] - 18:6, 18:15, 24:22, 25:20  
**Section** [1] - 26:14  
**security** [14] - 4:21, 4:23, 6:2, 6:4, 10:13, 11:9, 11:10, 11:14, 13:11, 14:7, 14:11, 25:19, 26:6, 26:21  
**see** [1] - 29:12  
**seeking** [1] - 14:4  
**send** [1] - 17:6  
**sense** [2] - 4:11, 16:12  
**separate** [1] - 16:20  
**separation** [1] - 7:13  
**separation-of-powers** [1] - 7:13  
**September** [3] - 3:12, 15:25, 16:5  
**seriously** [1] - 27:11  
**served** [1] - 27:16  
**set** [1] - 16:3  
**settled** [1] - 24:10  
**severity** [1] - 25:2  
**Shibly** [2] - 17:17, 17:18

**shook**<sup>[1]</sup> - 17:19  
**short**<sup>[1]</sup> - 19:13  
**shorthand**<sup>[1]</sup> - 1:22  
**show**<sup>[1]</sup> - 17:17  
**showing**<sup>[10]</sup> - 6:14, 8:10, 8:12, 8:15, 8:24, 11:23, 21:23, 24:11, 24:18, 27:7  
**shown**<sup>[1]</sup> - 10:5  
**significant**<sup>[4]</sup> - 12:21, 25:4, 26:6, 26:21  
**significantly**<sup>[1]</sup> - 10:22  
**similarly**<sup>[1]</sup> - 10:16  
**simply**<sup>[6]</sup> - 8:2, 11:17, 12:11, 14:6, 15:13, 26:7  
**single**<sup>[1]</sup> - 18:7  
**six**<sup>[1]</sup> - 12:23  
**slightly**<sup>[1]</sup> - 13:8  
**sometimes**<sup>[1]</sup> - 18:23  
**sorry**<sup>[1]</sup> - 19:11  
**sort**<sup>[2]</sup> - 7:12, 15:8  
**specific**<sup>[4]</sup> - 16:1, 23:24, 24:4, 26:14  
**specifically**<sup>[2]</sup> - 11:21, 25:12  
**split**<sup>[1]</sup> - 17:4  
**squarely**<sup>[1]</sup> - 25:23  
**standard**<sup>[11]</sup> - 8:16, 14:12, 15:2, 15:14, 19:2, 19:14, 19:15, 19:18, 19:20, 19:21, 19:22  
**start**<sup>[1]</sup> - 9:23  
**started**<sup>[1]</sup> - 27:9  
**state**<sup>[1]</sup> - 10:15  
**States**<sup>[1]</sup> - 24:21  
**STATES**<sup>[2]</sup> - 1:2, 1:12  
**status**<sup>[19]</sup> - 6:18, 9:14, 10:8, 12:8, 12:15, 13:4, 13:5, 13:9, 17:25, 18:5, 20:24, 21:2, 22:4, 22:8, 22:11, 22:21, 22:24, 23:6, 23:12  
**stay**<sup>[24]</sup> - 2:12, 2:19, 4:15, 4:19, 4:21, 8:11, 10:2, 10:14, 10:20, 14:21, 17:7, 20:21, 21:5, 21:11, 24:9, 24:10, 24:14, 26:3, 27:10, 27:17, 27:25, 28:25, 29:11  
**stayed**<sup>[3]</sup> - 13:20, 24:5, 27:8  
**stays**<sup>[1]</sup> - 17:7  
**stenotype**<sup>[1]</sup> - 1:22  
**steps**<sup>[1]</sup> - 23:2  
**still**<sup>[1]</sup> - 13:7  
**stopped**<sup>[1]</sup> - 12:23  
**strong**<sup>[4]</sup> - 8:15, 8:24, 24:11, 24:18  
**subject**<sup>[1]</sup> - 18:17  
**submission**<sup>[1]</sup> - 22:11  
**submissions**<sup>[1]</sup> - 28:22  
**submit**<sup>[1]</sup> - 28:13  
**submitted**<sup>[2]</sup> - 28:20, 28:21  
**substantial**<sup>[4]</sup> - 8:10, 8:14, 8:20, 8:23  
**substantially**<sup>[3]</sup> - 7:2, 24:15, 27:9  
**substantive**<sup>[4]</sup> - 3:5, 3:18, 4:1, 16:23  
**succeed**<sup>[2]</sup> - 24:12, 24:19  
**success**<sup>[2]</sup> - 8:6, 9:25  
**suffer**<sup>[1]</sup> - 27:7  
**sufficient**<sup>[4]</sup> - 12:14, 27:7, 28:15, 28:17

**sufficiently**<sup>[3]</sup> - 24:18, 25:11, 27:5  
**suggest**<sup>[2]</sup> - 4:10, 13:14  
**summary**<sup>[5]</sup> - 11:1, 11:3, 11:5, 12:1, 23:14  
**Supreme**<sup>[1]</sup> - 25:24  
**suspenders**<sup>[1]</sup> - 15:8  
**system**<sup>[1]</sup> - 23:21

## T

**table**<sup>[1]</sup> - 2:8  
**tandem**<sup>[1]</sup> - 26:18  
**target**<sup>[1]</sup> - 17:23  
**tens**<sup>[1]</sup> - 24:23  
**Tenth**<sup>[3]</sup> - 17:12, 20:18, 25:6  
**term**<sup>[1]</sup> - 26:4  
**terrorism**<sup>[1]</sup> - 14:19  
**Terrorism**<sup>[1]</sup> - 21:18  
**terrorist**<sup>[1]</sup> - 18:15  
**Terrorist**<sup>[1]</sup> - 23:6  
**THE**<sup>[44]</sup> - 1:2, 1:12, 2:3, 2:10, 2:14, 2:18, 3:6, 3:15, 3:24, 4:3, 4:7, 4:12, 4:15, 4:17, 5:1, 5:9, 5:16, 5:24, 6:1, 6:5, 6:24, 7:16, 7:23, 8:13, 8:18, 9:4, 9:9, 9:11, 12:5, 12:19, 12:25, 13:24, 14:8, 14:23, 15:3, 15:11, 15:21, 16:14, 20:1, 20:3, 21:7, 29:5, 29:9, 29:12  
**themselves**<sup>[1]</sup> - 27:21  
**thinks**<sup>[1]</sup> - 12:9  
**third**<sup>[2]</sup> - 24:1, 24:14  
**thousands**<sup>[1]</sup> - 24:23  
**threat**<sup>[1]</sup> - 14:15  
**threaten**<sup>[1]</sup> - 26:5  
**threshold**<sup>[12]</sup> - 6:13, 6:16, 11:23, 12:14, 12:22, 13:2, 13:8, 13:11, 14:13, 20:6, 21:23, 22:1  
**time-consuming**<sup>[3]</sup> - 9:13, 18:13, 18:19  
**today**<sup>[2]</sup> - 3:22, 17:3  
**together**<sup>[2]</sup> - 21:21, 22:18  
**Tony**<sup>[2]</sup> - 1:16, 2:9  
**towards**<sup>[2]</sup> - 23:15, 23:21  
**transcript**<sup>[1]</sup> - 30:4  
**TRANSCRIPT**<sup>[1]</sup> - 1:11  
**Transcript**<sup>[1]</sup> - 1:23  
**transcription**<sup>[1]</sup> - 1:23  
**TRENGA**<sup>[1]</sup> - 1:12  
**trigger**<sup>[1]</sup> - 14:13  
**triggering**<sup>[1]</sup> - 25:8  
**trip**<sup>[3]</sup> - 12:7, 12:22, 13:10  
**TRIP**<sup>[6]</sup> - 3:10, 5:22, 11:11, 21:19, 22:12, 25:10  
**trying**<sup>[1]</sup> - 17:8  
**TSBD**<sup>[1]</sup> - 22:3  
**TSDB**<sup>[10]</sup> - 5:15, 5:21, 6:18, 11:19, 11:21, 19:15, 21:17, 22:9, 22:13, 23:5  
**two**<sup>[6]</sup> - 7:16, 7:25, 8:8, 8:20, 17:5, 29:4  
**type**<sup>[1]</sup> - 20:7

**typically**<sup>[1]</sup> - 27:3

## U

**U.S.C**<sup>[2]</sup> - 21:14, 26:13  
**under**<sup>[10]</sup> - 11:1, 11:7, 13:10, 15:16, 22:14, 25:22, 26:12, 26:14, 28:16, 28:21  
**undertaken**<sup>[1]</sup> - 9:14  
**undertaking**<sup>[3]</sup> - 9:13, 18:14, 18:20  
**undisclosed**<sup>[1]</sup> - 25:21  
**undisputed**<sup>[2]</sup> - 17:17, 18:24  
**unequivocal**<sup>[1]</sup> - 16:4  
**unequivocally**<sup>[1]</sup> - 10:12  
**unfair**<sup>[1]</sup> - 19:4  
**unhelpful**<sup>[1]</sup> - 18:1  
**UNITED**<sup>[2]</sup> - 1:2, 1:12  
**United**<sup>[1]</sup> - 24:20  
**universe**<sup>[2]</sup> - 13:6, 13:8  
**unprecedented**<sup>[1]</sup> - 25:18  
**up**<sup>[8]</sup> - 7:3, 8:1, 12:7, 12:13, 14:16, 19:22, 19:23, 19:24

## V

**vacated**<sup>[2]</sup> - 4:3, 28:5  
**vagueness**<sup>[1]</sup> - 19:15  
**valid**<sup>[1]</sup> - 16:16  
**vary**<sup>[1]</sup> - 25:2  
**view**<sup>[5]</sup> - 4:24, 5:15, 8:4, 16:15, 23:21  
**VIRGINIA**<sup>[1]</sup> - 1:2  
**Virginia**<sup>[1]</sup> - 1:7  
**volition**<sup>[1]</sup> - 18:4

## W

**wait**<sup>[1]</sup> - 9:1  
**waive**<sup>[1]</sup> - 14:5  
**watchlist**<sup>[17]</sup> - 10:8, 17:11, 17:18, 17:24, 18:5, 18:7, 18:12, 18:16, 18:19, 18:25, 19:17, 23:12, 24:22, 25:12, 25:18, 25:22, 25:25  
**watchlisting**<sup>[4]</sup> - 15:24, 16:4, 19:3, 23:21  
**Watchlisting**<sup>[7]</sup> - 9:4, 18:22, 23:1, 23:15, 23:22, 24:1, 24:7  
**ways**<sup>[3]</sup> - 8:7, 17:23, 25:5  
**weeks**<sup>[1]</sup> - 24:3  
**weigh**<sup>[1]</sup> - 15:17  
**weight**<sup>[1]</sup> - 14:20  
**welcome**<sup>[1]</sup> - 2:14  
**well-settled**<sup>[1]</sup> - 24:10  
**whatsoever**<sup>[1]</sup> - 21:3  
**whereas**<sup>[1]</sup> - 11:8  
**whole**<sup>[1]</sup> - 16:17  
**willingness**<sup>[1]</sup> - 26:11  
**withheld**<sup>[1]</sup> - 3:7  
**word**<sup>[2]</sup> - 11:16, 20:3  
**worried**<sup>[1]</sup> - 6:5  
**worth**<sup>[1]</sup> - 25:16

Wray<sup>[1]</sup> - 25:6

Y

years<sup>[2]</sup> - 17:22, 28:16